



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,552	09/10/2003	Anthony T. D'Amico	DAT104B	3096
32299	7590	07/26/2006	EXAMINER	
DENISE M GLASSMEYER YOUNG & BASILE, P.C. 3001 W. BIG BEAVER RD., SUITE 624 TROY, MI 48084-2813				BRANDT, ADAM CURTIS
		ART UNIT		PAPER NUMBER
		3743		

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/659,552	D'AMICO, ANTHONY T.
	Examiner Adam Brandt	Art Unit 3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 9/10/2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-31 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 23-28 is/are allowed.
- 6) Claim(s) 1-20,22 and 29-31 is/are rejected.
- 7) Claim(s) 21 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 9/10/2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/10/2003</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Priority

The applicant benefits from provisional application **60/409519** filed on **09/10/2002**. The effective filing date for application **10/659552** is **09/10/2002**.

Information Disclosure Statement

The information disclosure statement meets the requirements of 37 CFR 1.97 and 37 CFR 1.98.

The references have been accepted by the examiner.

Specification

1. The disclosure is objected to because of the following informalities: paragraph 0008 contains grammatical errors. Reconsider the usage “employed employ.”
2. Paragraph 0034 references figure 4. The Examiner does not understand the basis for this reference. Figure 6 would be a more appropriate selection.
3. Paragraph 0050: 122 is referred to as an “adjustment member” and an “elongated member.” Please clearly define 122.
4. Figure 14 is referred in paragraph 0075. Figure 14 is not included in the drawings. Appropriate correction is required.

Drawings

5. The drawings are objected to under 37 CFR 1.83(a) because they fail to show tension line (14), tension release line (25), knot (142), knot (250), bore (252) in any of the figures 1-9 as

described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 300, 312, 318, 322, 326, 352. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. In addition, the numbers on figure 3 are difficult to discern in gas spring/alternative pulley area of the figure. Please make these numbers more legible.

Claim Objections

8. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: claim 7 speaks of "The motorized mechanism." No motorized mechanism is introduced in the preceding claims of which the claim is dependent upon. It is recommended that the applicant amend the dependency of claim 7 to claim 6 instead of claim 5.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. **Claims 2-16, 29-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

11. In regards to claim 29: It is unclear to the examiner, after carefully reading the claim, to understand what the applicant is attempting to claim within the metes and bounds of the claim.

Claim 29 recites the limitation "means for connecting the tractive force transferring system".

There is insufficient antecedent basis for this limitation in the claim.

12. Claims 2-8, 11-16 are dependent upon claim 29 and thus are also considered to be indefinate.

13. In regards to claim 30: The applicants use of the word comprising twice renders the claim as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

14. Claims 9-10 are dependent upon claim 30 and thus are not understood by the Examiner

Claim Rejections - 35 USC § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that from the basis for the rejection under this section made in this office action:

A person shall be entitled to a patent unless:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. **Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by D'Amico (USPN 5,957,876; "D'Amico").**

17. In regards to claim 1: The Examiner notes that as broadly as written, D'Amico anticipates claim 1. D'Amico discloses in figure 2 a body contacting assembly (12) for use on a support surface that can releaseably contact an anatomical region of a patient. And a tractive force exertion apparatus (figure 5b) capable of exerting tractive force on the body contacting assembly. The tractive force exertion apparatus includes a gas spring (320) member with an upper and lower end that is variable between an extended rest position and a retracted force exerting position.

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

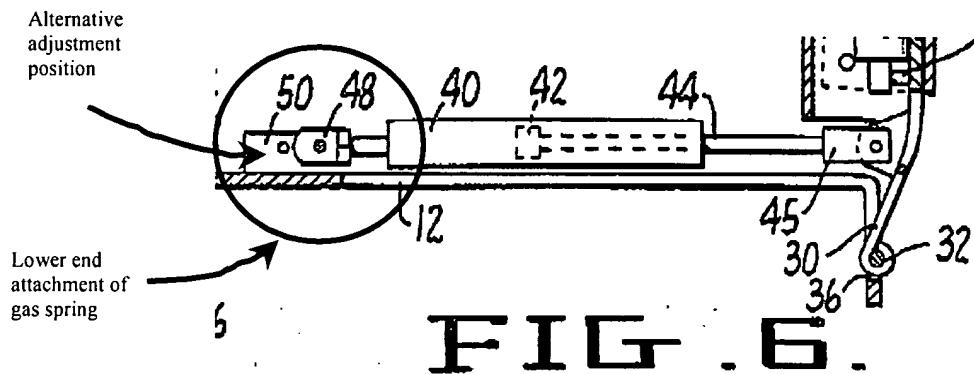
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. **Claims 17-20, 22, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powlan (USPN 3,888,243; "Powlan").**

20. In regards to claim 17: Powlan discloses in figure 1 a body contacting assembly (cervical sling, figure 1) that releaseably contacts the patient. Figure 2 discloses a tractive force exerting apparatus capable of exerting force on the body contacting assembly containing a gas spring

member (40), an elongate member (26) adjustably attached to the lower end (see figure below) of the gas spring, a truss (12) having a first end region and a second end region located proximate to the elongate member, wherein the truss is in pivotal connection (32) with the elongate member and a tractive force transferring system including a tension line (28) having a first end and a second end. Although Powlan does not specifically recite that the elongated member is adjustably attached to a lower end of the gas spring, Powlan is considered to disclose an obvious mechanical equivalent for the following reason.

21. The elongate member (26) that is adjustably attached to the lower end of the gas spring: The gas spring (40) can be adjusted horizontally along the line of operation. A pin can be removed from terminal bar (48). The terminal bar can be aligned with the adjacent hole and the pin can be reinserted in the hole. Thus making the gas spring adjustable. Adjusting the gas spring at the upper or lower end is a considered to be an obvious design alternative because the alteration will uniformly affect the performance of the spring at either end.



22. In regards to claim 18: Powlan discloses a pulley mechanism (76) located proximate to an upper end of the gas spring, wherein the tension line extends through the pulley mechanism

from a point of attachment with the body contacting assembly to a point of attachment with the elongate member of the tractive force exerting mechanism.

23. In regards to claim 19: Powlan discloses a support surface (14) upon which the tractive force transferring means is mounted.

24. In regards to claim 20: Powlan discloses a mounting bracket (20) that attaches to a support surface (14), which is considered to be a table in a reasonably broad sense.

25. In regards to claim 22: Powlan discloses a body contacting assembly (cervical sling, figure 1) configured to engage a body proximate to at least one of the cervical region or lumbar region.

26. In regards to claim 31: Powlan discloses a tension line release line (cervical sling, figure 1). The tension release line (cervical sling, figure 1) has a first end connected to the tension line and a second end configured to releaseably contact an appendage of a patient utilizing the device.

Allowable Subject Matter

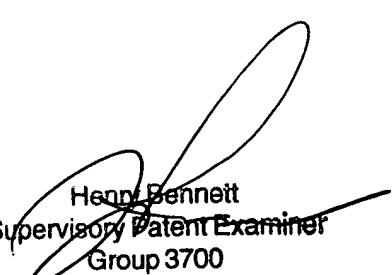
27. Claim 21 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Brandt whose telephone number is 571-272-7199. The examiner can normally be reached on 8:30 AM to 4:30 PM; Mon thru Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ACB


Henry Bennett
Supervisory Patent Examiner
Group 3700


Adam Brandt
Examiner
Art Unit 3743